IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO. 324 OF 2004

M/s. Vijay Kumar Roopchandani .. Applicant

Vs.

Union of India .. Respondent

Mr. G.L. Masand for Applicant.
Mr. Suresh Kumar for Respondent.

CORAM : B. H. MARLAPALLE,J.

Date : February 03, 2006.

P.C.:

1. Heard Mr. Masand, the learned counsel for the applicant-firm and Mr. Suresh Kumar the learned counsel for the respondent-Western Railway. The Respondent has filed affidavit in reply and pointed out that during the pendency of this Arbitration Application, the applicant submitted a representation dated 23/1/2005 to the Respondent and requested for extension being granted for completion of the work so that the disputes between the parties would come to an end and all proceedings including arbitration proceedings would stand withdrawn. The following portion from the said letter which is relevant is reproduced hereinbelow:-

> "We, therefore, are approaching by this letter to you to review said extension granted and grant us extension of time without levy of

penalty. It is also undisputed fact that the Railway has not paid us PVC from time to time as said extension was given to us with token of penalty in certain stage. It is also undisputed fact that we almost completed the work despite increase in the market in the cost of labour, fuel and material as we are Railway's bonafide contractors despite said increase we gone ahead with work. We do not believe in restoring arbitration proceedings for settlement of our claims. We always try to come to you for relief and this case also we are approaching you to review the extension application and grant us extension without levy of penalty for entire period, even if earlier extension granted with token penalty. Your favourable order will enable us to obtain payment under PVC and avoid litigation in the matter under such event our various claims stands withdrawn and we have no claim against Railways as we believe that Railways would arrange legitimate due and payable amount in the final bill. Cash flow under price variation clause will enable us to complete the balance work at very earlier date."

2. By letter dated 4/2/2005 addressed to the applicant, the respondent conveyed the decision to accede to the request of granting extension with a token penalty of Rs.4000/- per month. As per Clause 64, the petitioner is required to wait for a period of 120/180 days to initiate fresh arbitration proceedings in case the bills submitted pursuant to the extension granted now are not decided by the respondent and, therefore, the contentions of Mr. Suresh Kumar that the arbitration proceedings cannot be initiated, as at present, required to be accepted. Mr. Masand referred to the various orders passed by this court in Arbitration Application No.300 of 2004 and others and

insisted that inspite of these subsequent developments this application deserves to be allowed on the lines of the said orders passed earlier. The respondent has relied upon the decision in the case of Shetty's Construction Company Pvt. Ltd. vs. Konkan Railway Corpn. Ltd. and anr. reported in (1999) 8 SCC 604 in support of its contentions that this Arbitration Application dies not survive, as at present and under Clause 64 of the agreement/contract the applicant will have to approach for appointment of Arbitrator after the period of 120/180 days is over on submission of the fresh bills. These arguments are required to be accepted in view of the terms of the contract between the parties.

3. The application is, therefore, rejected as not maintainable, as at present and the said rejection is without prejudice to the applicant's right that may arise in future under Clause 64 of the agreement.

(B.H. Marlapalle, J.)